

**Department of Mental Health
Exceptions Committee Meeting**

August 6, 2003

Minutes

In attendance were Julie Carel, Jodi Frederick, Rebecca Carson, Jackie Coleman, Donna Haley, intern Megan Jarrett and coordinator Rich Overmann.

A Special Place, Kansas City, requested an exception from requirements for a Qualified Mental Health Professional on behalf of an employee, Laura Warner. Ms. Warner has an associate degree in Advertising , with nine hours in the human services field. The committee denied the exception because Ms. Warner lacks the educational background necessary to fulfill the duties of a QMHP.

Curtis Campbell, a private individual, requested an exception under 9 CSR 10-5.190. The information he provided did not include several items required under the administrative rule. The committee requested additional information.

August 6, 2003

Laura Warner
A Special Place
5900 S. Noland Rd.
Kansas City, MO 64133

Dear Ms. Warner:

On August 6, 2003, the Department of Mental Health Exceptions Committee considered your request for an exception from the educational requirements for a Qualified Mental Health Professional (QMHP). The committee did not approve an exception because your education is significantly lacking in coursework in the human service field, which is considered necessary preparation for the duties of a QMHP.

If you have any questions in this matter, please contact me at 573-751-8077.

Sincerely,

Richard H. Overmann
Exceptions Committee Coordinator

August 6, 2003

Curtis Campbell
19794 State Route DD
St. Joseph, MO 64505

Dear Mr. Campbell:

On August 6, 2003, the Department of Mental Health Exceptions Committee reviewed your request for an exception under 9 CSR 10-5.190. The committee was unable to properly consider the request because the information you provided was lacking in several areas. Attached are copies of two administrative rules which relate to this matter and which you will find instructive in applying for an exception. The first rule, 9 CSR 10-5.190 deals with disqualification from employment and contains some information about exceptions. The second rule, 9 CSR 10-5.210 deals specifically with the exceptions process.

To continue consideration of your request the committee requested two items in particular.

First a copy of your criminal record.

Second a letter from you which includes a resume with your education and work history, and the items listed under 9 CSR 10-5.210 (B). (In the attached copy of the rule I am putting this material in bold print.) In response to # 8, please include some details about the type of work/client you envision working with upon graduation. Specifically, do you intend to work with -

- persons who are mentally retarded or developmentally disabled?
- persons who are mentally ill? and/or
- persons who are afflicted with alcohol or drug abuse?

If you have any questions in this matter, please contact me at 573-751-8077.

Sincerely,

Richard H. Overmann
Exceptions Committee Coordinator

9 CSR 10-5.190 Criminal Record Review

PURPOSE: This rule establishes standards for obtaining a criminal record review for certain staff in residential facilities, day programs or specialized service operated or funded by the Department of Mental Health.

(1) For the purposes of this rule, residential facilities, day programs and specialized services are divided into two (2) categories, as follows:

(A) Category I. Those that are certified or licensed exclusively by the Department of Mental Health or, although not certified or licensed, are funded by the department. Specifically this category includes:

1. Agencies certified by the Department of Mental Health as community psychiatric rehabilitation programs (CPRP);
2. Agencies certified by the Department of Mental Health in the community-based waiver certification program;
3. Agencies certified by the Division of Alcohol and Drug **Abuse**;
4. Facilities that have contractual arrangements with the department but are exempt from the department's licensing and certification rules due to accreditation or other reason; and
5. Facilities and day programs which are licensed by the department and do not have a license from another state agency; and

(B) Category II. Those that, in addition to a license or certificate from the Department of Mental Health, have a license or certification from another state agency. Specifically, this category includes facilities licensed by the Division of Aging, the Division of Family Services and the Department of Health; also included are intermediate care facilities/mental retardation (ICF/MR). Facilities and agencies included in Category II are subject to rules regarding criminal record review as promulgated by the state agency which licenses or certifies them and are not subject to sections (2) through (7) of this rule. However such agencies are subject to sections (8), (9), (10) and (11) regarding disqualifying crimes.

(2) This rule applies to--

(A) Staff;

(B) Volunteers who are recruited as part of an agency's formal volunteer program and does not apply to volunteers who assist individuals as a friend would by providing assistance with shopping, transportation, recreation, etc.; and

(C) Members of the providers household who have contact with residents or clients, except for minor children.

(3) Each residential facility, day program or specialized service defined under Category I above shall make an inquiry with the Department of Social Services to determine whether any new employee or volunteer having contact with residents or clients is listed on the Division of Aging's employment disqualification list.

(4) Each residential facility, day program or specialized service defined under Category I above shall conduct a criminal background check with the state highway patrol for new staff and volunteers who have contact with patients, residents or clients. The request for the background check shall not require fingerprints and shall be in accordance with requirements of the state highway patrol under Chapter 43, RSMo. The facility, program or service may use a private investigatory agency to conduct this review.

(5) The criminal background check and inquiry with the Department of Social Services shall be initiated not later than two (2) working days of hiring the employee or selecting the volunteer.

(6) In accordance with section 660.317, RSMo, each residential facility, day program and specialized service included under Category I shall require all new applicants for employment or volunteer positions involving contact with residents or clients to--

(A) Sign a consent form authorizing a criminal record review with the highway patrol, either directly through the patrol or through a private investigatory agency;

(B) Disclose his/her criminal history, including any conviction or a plea of guilty to a misdemeanor or felony charge and any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole; and

(C) Disclose if s/he is listed on the employee disqualification list of the Division of Aging.

(7) Each agency shall develop policies and procedures regarding the implementation of this rule and the disposition of information provided by the criminal record review. At a minimum the guidelines shall address--

(A) Procedures for obtaining the criminal record review;

(B) Procedures for confidentiality of records; and

(C) Guidelines for evaluating information received through the criminal record review which establish a clear boundary between those convictions which, by statute, must exclude an individual from service, and those convictions which would not automatically exclude an individual.

(8) Convictions which under sections 630.170 and 660.317, RSMo exclude a person from service are the following:

(A) A person who has been convicted of, found guilty of, pled guilty to or nolo contendere to any of the following crimes shall be disqualified from holding any position in the agency:

1. Physical abuse or Class I Neglect of a patient, resident or client; or
2. Furnishing unfit food to patients, residents or clients; and

(B) A person who has been convicted of, found guilty to, pled guilty to or nolo contendere to any of the following crimes shall be disqualified from holding any position having contact with patients, residents or clients in the agency. These crimes are not disqualifying unless they are felonies, except for failure to report abuse and neglect to the Division of Aging, which is a Class A misdemeanor. The disqualifying crimes are:

1. First or second degree murder;
2. Voluntary manslaughter (includes assistance in self-murder);
3. Involuntary manslaughter;
4. First or second degree assault;
5. Assault while on school property;
6. Unlawful endangerment of another;
7. First or second degree assault of a law enforcement officer;
8. Tampering with a judicial officer;
9. Kidnapping;
10. Felonious restraint;
11. False imprisonment;
12. Interference with custody;
13. Parental kidnapping;
14. Child abduction;
15. Elder abuse in the first degree or the second degree;
16. Harassment;
17. Stalking;
18. Forcible rape;
19. First or second degree statutory rape;
20. Sexual assault;
21. Forcible sodomy;
22. First or second degree statutory sodomy;
23. First or second degree child molestation;
24. Deviate sexual assault;
25. First degree sexual misconduct;

26. Sexual abuse;
27. Endangering the welfare of a child;
28. Abuse of a child;
29. Robbery in the first degree or second degree;
30. Arson in the first or second degree;
31. First or second degree pharmacy robbery;
32. Incest;
33. Causing catastrophe;
34. First degree burglary;
35. Felony count of invasion of privacy;
36. Failure to report abuse and neglect to the Department of Social Services as required under subsection 3 of section 198.070, RSMo; or
37. Any equivalent felony offense.

(9) Any person disqualified from employment under this rule may appeal the disqualification to the department's Exceptions Committee.

(A) The request shall be written and may not be made more than one (1) time every twelve (12) months.

(B) The request may be granted if a clear showing has been made that--

1. The person will not commit any additional acts for which the person had originally been disqualified; and
2. The person will not commit any other acts which would be harmful to a patient, resident or client of a facility, program or service.

(C) The Exceptions Committee may grant the appeal subject to conditions and failure to comply with such conditions may result in the person being again disqualified.

(D) The decision of the Exceptions Committee shall not be subject to appeal.

(E) The right to receive an exception under this subsection shall not apply to persons convicted of any of the following crimes:

1. First or second degree murder;
2. First or second degree statutory rape;
3. Sexual assault;
4. Forcible sodomy;
5. First or second degree statutory sodomy;
6. First or second degree child molestation;
7. Deviate sexual assault;
8. Sexual misconduct involving a child;
9. First degree sexual misconduct;
10. Sexual abuse;
11. Incest;
12. First or second degree endangering the welfare of a child;
13. Abuse of a child;
14. First or second degree pharmacy robbery;
15. First degree burglary; or
16. Forcible rape.

(10) For the purposes of this rule, a verdict of not guilty by reason of insanity (NGRI) is not per se disqualifying. A suspended imposition of sentence (SIS) or suspended execution of sentence (SES) is disqualifying.

(11) A provider shall not hire any person who has committed a disqualifying crime as identified in section (8) of this rule, unless the person has received an exception from the department. However, the provider retains the discretionary authority to deny employment to persons who--

- (A) Have committed crimes not identified as disqualifying;
- (B) Have received an exception from the Exceptions Committee; or
- (C) Have received a verdict of Not Guilty by Reason of Insanity.

*AUTHORITY: sections 630.170, 630.710 and 660.317, RSMo Supp. 1997 and 630.655, RSMo 1994. * Emergency rule filed Aug. 15, 1997, effective Aug. 28, 1997, expired Feb. 26, 1998. Original rule filed Aug. 15, 1997, effective March 30, 1998. Amended: Filed Oct. 29, 1998, effective May 30, 1999.*

**Original authority: 630.170, RSMo 1980, amended 1982, 1996, 1998; 630.655, RSMo 1980; 630.710, RSMo 1980, amended 1996; and 660.317, RSMo 1996, amended 1997, 1998.*

9 CSR 10-5.210 Exceptions Committee Procedures

PURPOSE: This rule establishes procedures for requesting an exception from the administrative rules of the Department of Mental Health.

(1) Definition. An exception is a decision by the department not to enforce an administrative rule under the individual circumstances described in the request for an exception and the conditions described in the approval. None of the following are subject matter of an exception:

- (A) A contention that the rule is not valid;
- (B) A contention that the provider is in fact in compliance with the rule; and
- (C) A request for an interpretation of a rule.

(2) Rules Subject to an Exception. Only the following statutes and rules may be the subject of an exception:

- (A) Statutes and rules related to crimes that disqualify from employment under section 630.170, RSMo and 9 CSR 10-5.190;
- (B) Licensure rules for residential facilities and day programs promulgated under 9 CSR 40;
- (C) Certification rules for alcohol and drug abuse programs and psychiatric programs promulgated under 9 CSR 30;
- (D) Certification rules under 9 CSR 45 for programs serving persons who are developmentally disabled under the Community Based Waiver Program;
- (E) Any other administrative rule promulgated by the Department of Mental Health that specifically allows for an exception.

(3) Who may apply for an exception?

- (A) A chief executive officer, or designee, on behalf of a residential facility, day program or specialized service, or an employee thereof.
- (B) An individual may request an exception on his or her own behalf with respect to criminal backgrounds under 9 CSR 10-5.190.
- (C) A facility operated by the department on behalf of a residential facility, day program or specialized service licensed, operated or funded by the department.
- (D) Any other person or entity affected by an administrative rule under subsection (2)(D) of this rule.

(4) How to request an exception.

(A) A person may request an exception by sending to the exceptions committee a written request which—

- 1. Cites the rule number or statutes number in question;
- 2. Indicates why and for how long compliance with the rule should be waived; and
- 3. Is accompanied by supporting documentation, if appropriate.

(B) In addition, the following additional items must be part of a request under 9 CSR 10-5.190 Criminal Record Review.

- 1. A letter from the offender describing the crime and other factors under paragraphs 1. through 12. of this subsection;**
- 2. A description of the specific crime or crimes;**
- 3. When they occurred;**

4. Mitigating circumstances, if any;
5. The sentence of the court, including conviction date, sentence status and release date;
6. Activities and accomplishments since the crime;
7. The names and dates of any rehabilitative services;
8. The type of service and/or program the applicant wishes to provide for mental health clients;
9. Identification of the type of employment or position the applicant wishes to maintain or obtain and the name of the mental health program in which he or she wishes to work or continue working;
10. Changes in personal life since the crime (e.g. marriage, family, and education);
11. References, i.e., written recommendations from at least three (3) persons who verify the applicant's assertions; and
12. Work history, with particular emphasis on work in the mental health field.

(C) Request for exceptions should be sent to Exceptions Committee Coordinator, Office of Quality Management, Department of Mental Health, PO Box 687, Jefferson City, MO 65102.

(5) Response. Within forty-five (45) calendar days of receiving a request for an exception, the exceptions committee shall respond in writing.

(A) The committee may approve a request, approve the request with conditions, deny the request or defer a decision pending receipt of additional information.

(B) An approved exception regarding criminal backgrounds under 9 CSR 10-5.190 becomes null and void if the subject changes employment or if there are other changes in the circumstances described in the request.

(6) Decisions of the exceptions committee are not subject to appeal. However persons aggrieved by a decision may modify and repeat a request after ninety (90) days. Persons requesting an exception under 9 CSR 10-5.190 must wait twelve (12) months before repeating a request.

(7) Documentation. A recipient of an exception shall—

(A) Maintain documentation of all approved exceptions and make the documentation available for review upon request by authorized staff of the department; and

(B) Annually send to the exceptions committee documentation which—

1. Addresses whether the exception has been implemented, the exception is still necessary and its effect on services;

2. Is required under the terms and conditions announced in the letter of approval.

(8) The Department of Mental Health will review the approved exceptions at least annually to determine whether the exception has been properly implemented and whether its implementation is having the intended impact on services.

(9) Expiration Date for an Exception.

(A) An exception becomes null and void without any further action by the department under any of the following circumstances.

1. An expiration date is announced in the letter of approval.

2. The subject for whom the exception was granted changes employment.

3. There are changes in other circumstances described in the request.

(B) If an exception expires under this section, it may be renewed by submission of a new request.

(10) Rescinding Decisions. The exceptions committee may rescind any exception if, in its judgment, any of the following occur:

(A) The provider failed to meet a condition of the exception, or to maintain documentation required under section (7);

(B) It is discovered that the request contained misleading, incomplete or false information; or

(C) The exception results in poor quality of care, or risk/harm to a client or resident.

(11) If the committee rescinds an exception, the committee shall provide all concerned parties with a notice of rescission with an effective date. There shall be no appeal of a rescission of an exception.

AUTHORITY: sections 630.050, 630.170 and 630.656 RSMo 2000. Original rule filed Feb. 23, 2001, effective Sept. 30, 2001.*